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Attorney for Defendants
Arrayit Corporation, Rene Schena,
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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REUBEN TAUB, IRWIN ZALCBERG
and IRWIN ZALCBERG PROFIT
SHARING PLAN,

15 Civ. 01366 (ALC)

Plaintiffs,

-against-

ARRAYIT CORPORATION,
RENE SCHENA, MARK SCHENA
and TODD MARTINSKY,

**NOTICE OF MOTION
FOR PARTIAL
DISMISSAL OF THE
AMENDED COMPLAINT**

Defendants,

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PLEASE TAKE NOTICE that upon the attorney affirmation of Lewis P. Trippett, dated July 28, 2015, and the exhibits attached thereto; the Declaration of Rene Schena, dated July 28, 2015, and the exhibits annexed thereto; the Declaration of Rene Schena dated March 7, 2016 and the exhibits annexed thereto, the Declaration of Phil Ruben dated March 7, 2016, and a Memorandum of Law, dated March 7, 2016, Defendants will


move this Court before the Honorable Andrew L. Carter, Jr., at the United States Courthouse at Foley Square, 40 Centre Street, New York, New York on at _____, or as soon thereafter as counsel may be heard, for an order, pursuant to the Federal Rules of Civil Procedure, Rule 12(b)(6), (i) dismissing the second cause of action for failure to state a cause of action for which relief may be granted; (ii) dismissing the third cause of action for fraud for failure to state a cause of action upon which relief may be granted; or, (iii) if the third cause of action is not dismissed, dismissing the first cause of action for breach of contract, based upon an election of remedies; (iv) dismissing Plaintiffs' demand for the imposition of punitive damages; (v) dismissing Plaintiff Irwin Zalcberg Profit Sharing Plan as a plaintiff in this action; (vi) dismissing Defendant Rene Schena from this action; and for such other and further relief as to the Court appears to be just and proper.

PLEASE TAKE FURTHER NOTICE that, pursuant to an order of the Court, Plaintiffs' opposition papers to this motion are to be served on or before March 21, 2106;

PLEASE TAKE FURTHER NOTICE that Defendants request oral argument on the motion.

Dated: New York, New York
March 7, 2016

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BY: 
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